

**MINUTES OF THE REGULAR MEETING OF THE COMMON
COUNCIL OF THE CITY OF JASPER, INDIANA
MAY 17, 2006**

A meeting of the Common Council of the City of Jasper, Indiana, was held on Wednesday, May 17, 2006 in the Council Chambers of City Hall, 610 Main Street, Jasper, Indiana.

Call to Order.

Presiding Officer Mayor William J. Schmitt called the meeting to order at 7:04 p.m. The meeting was scheduled for 7:00 p.m. but was delayed due to the length of a preceding public hearing.

Roll Call.

Mayor William J. Schmitt	Present
Councilmembers	
John Schroeder	Present
Bradley Seger	Present
Thomas Schmidt	Present
Ambrose 'Butch' Schitter	Present
Renee Kabrick	Present
Randall Buchta	Present
Raymond Howard	Present
City Attorney Sandra Hemmerlein	Present
Clerk-Treasurer Juanita S. Boehm	Present

Clerk-Treasurer Juanita Boehm announced that in order to have a quorum for the meeting, a majority of the members of the legislative body must be in attendance. All seven of the members were in attendance; therefore, there was a quorum for the meeting.

Approval of the Minutes

The following minutes were distributed to and examined by the Council:

1. April 19, 2006 regular monthly common council meeting.
2. April 19, 2006 6:35 p.m. public hearing concerning the closing of a portion of an alley located between 8th and 9th Streets and between Main and Jackson Streets.
3. April 19, 2006 6:45 p.m. public hearing regarding Ordinance No. 2006-10, wastewater rate adjustments.

A **motion** was made by Councilmember Bradley Seger and seconded by Councilmember Ambrose Schitter to approve the minutes as presented. Motion carried 7-0.

Boy Scouts. Boys Scouts Dylan Fehribach, 181 Kaywood Lane and Tyler Lechner, 1107 W. Division Road were present. The scouts are working on their Citizenship in the Community merit badge.

Certificate of Appreciation. Commandant Dave Englert and Public Affairs Officer Steve Lindauer, members of Southern Indiana Leathernecks, Detachment Marine Corps League, presented Mayor Schmitt with a Certificate of

Appreciation for the City of Jasper. Mr. Lindauer stated that the certificate was to thank the city and its employees for all their support and help during recent funeral services for Marine Corporal Eric Lueken. He said the assistance from the city and the community was overwhelming.

Utility Service Board. Utility Service Board Chairman Greg Krodel presented a report of the regular monthly meeting held on May 15, 2006. Copies of the minutes are supplied to each council member.

Gas Contractor's License. Mayor Schmitt presented an Application for a Gas Contractor's License from Derick Stoll, 4979 N. 450E, Montgomery, Indiana, 47558. The applicant scored 82% on the application test and is employed by S & K Mechanical, Montgomery, Indiana.

A **motion** was made by Councilmember Ambrose Schitter and seconded by Councilmember Renee Kabrick and unanimously agreed, to approve the application for a Gas Contractor's License submitted by Derick Stoll.

Resolution No. 2006-4 A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF JASPER, INDIANA, ADOPTING A WRITTEN FISCAL PLAN AND ESTABLISHING A POLICY FOR THE PROVISION OF SERVICES TO AN ANNEXED AREA.

Resolution No. 2006-4 adopts a fiscal plan for 36 acres located at the northeast corner of US 231 and State Road 162 (Seminole Stone).

Upon motion by Councilmember Bradley Seger, seconded by Councilmember Thomas Schmidt, and unanimously approved, it was moved to read the resolution for one reading only. Thereafter, on motion made by Councilmember Randall Buchta, seconded by Councilmember Ambrose Schitter, and unanimously approved, it was moved to have the resolution read by title only. The resolution was so read. Thereafter, upon motion made by Councilmember Ambrose Schitter, seconded by Councilmember Thomas Schmidt, and unanimously approved, it was moved to pass and adopt Resolution No. 2006-4. During discussion, Financial Coordinator Sharon Sander explained the fiscal plan. She said the land is presently undeveloped and there are no specific plans for the vacant land.

Ordinance No. 2006-18 AN ORDINANCE PROHIBITING SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT IN THE CORPORATE LIMITS OF THE CITY OF JASPER, INDIANA.

Ordinance No. 2006-18 prohibits smoking in certain places and places of employment.

The ordinance was introduced upon motion by Councilmember Bradley Seger, seconded by Councilmember Thomas Schmidt, and unanimously approved, to read the ordinance by title only on first reading. The ordinance was so read. Thereafter, a motion was made by Councilmember Bradley Seger and seconded by Councilmember Raymond Howard to approve Ordinance No. 2006-18 on first reading.

During discussion, City Attorney Sandra Hemmerlein stated that this was the ordinance that the council had requested her to prepare for their review and consideration.

□ Hemmerlein reported that she had researched information she had received from IACT written by Robin Shackleford of the Indiana Health Care Association in regards to a Federal law that provides an exemption to residents of nursing homes that allows them to smoke in their rooms. Because this is a Federal law, Hemmerlein recommended amending the ordinance to add an exception to Section 5.05.060 Where Smoking Not Regulated as follows: 8. Designated rooms in nursing homes and other long-term care facilities in which residents only may smoke.

A **motion** was made by Councilmember Bradley Seger and seconded by Councilmember Ambrose Schitter to amend the ordinance under Section 5.05.060 (A) Where Smoking Not Regulated, by adding *Item #8, Designated rooms in nursing homes and other long-term care facilities in which residents only may smoke.* Motion unanimously passed.

□ There was discussion regarding Section 5.05.060 (A) (2), Twenty-five percent (25%) of hotel and motel rooms rented to guests. Councilmember Raymond Howard reported that he had ascertained from local hotels and motels that none had more than 22% of rooms available for smoking. Howard thought the percentage of smoking rooms should be lowered.

Thereafter, a **motion** was made by Councilmember Raymond Howard and seconded by Councilmember Bradley Seger to amend the ordinance under Section 5.05.060 (A) (2) Where Smoking Not Regulated, by changing 25% of hotel and motel rooms rented to guests to 22%. Motion passed 6-1. Councilmember John Schroeder voted against.

□ There was discussion about the definition of 'Private Club' and of 'Public Place', as well as, when a private club may become a public place. Discussion included whether or not the language *A Private Club is a Public Place when being used for a function to which nonmembers are invited* should be added to the definition of Public Place. Councilmember Ambrose Schitter was concerned about fund-raising events such as Bingo and dances at private clubs. He said when private clubs are open to the public for fund-raising events, they should remain exempt as a private club. Schitter was also concerned about a person with a one-man business in a private residence not being able to smoke. City Attorney Hemmerlein stated that under the definition of 'Place of Employment', it reads, *A private residence is not a place of employment unless it is used as a child care, adult day care or health care facility.*

Councilmember John Schroeder stated that the ordinance keeps getting more and more confusing with so many definitions and so many amendments. Councilmember Ambrose Schitter concurred and said he thought the state should regulate smoking. Councilmember Renee Kabrick responded that this was why she did not like the way the City was trying to regulate. She said that public health is a very important issue, and this ordinance is trying to give everybody what they

want, which is impossible. She said she was in favor of a simplified ordinance that would take effect over time to allow the county and community time to enforce at the same time. She said restaurant and bar owners have said they are in favor of a smoke-free ordinance if the whole county has such regulation. Councilmember Bradley Seger said that this was better than doing nothing and didn't want to pass the buck. He thought the ordinance was pretty simple and that the Council just had to make some definitions. Seger said he could not see a difference between a wedding reception held at a private club versus one held at the Holiday Inn. He said that when a private club holds an event open to the public, then the ordinance should be enforced. Councilmember John Schroeder said he was in favor of business owners making their own decisions and thought the education process was working and these regulations were not needed.

A **motion** was made by Councilmember Renee Kabrick and seconded by Councilmember Bradley Seger to amend the ordinance under **Section 5.05.010 Definitions**, by adding the sentence to item (k) Public Place, *A Private Club is a 'Public Place' when being used for a function to which nonmembers are invited.* Also add the wording *except when they meet the definition of Public Place* under **Section 5.05.060 (A) (7) Private Clubs**. The motion passed by a 4-3 vote with Council members Bradley Seger, Thomas Schmidt, Renee Kabrick and Raymond Howard voting for the amendment while Council members John Schroeder, Ambrose Schitter and Randall Buchta voted against.

□ Councilmember Bradley Seger sought clarification of the definition of a bar and an attached bar. City Attorney Sandra Hemmerlein read the "Columbus definition" and the definition under Section 5.05.010 Definitions (b) "Bar". She commented that the "Columbus" definition may be easier to enforce rather than some definitions that contain sale of alcoholic beverage language. If the definition for 'Bar' is changed, she recommended changing the definition of 'Attached Bar' so that they mirror each other.

A **motion** was made by Councilmember Bradley Seger and seconded by Councilmember Renee Kabrick to delete Bloomington's definition for BAR under **Section 5.05.010 (b)** and replace with Columbus' definition which is:

"Bar" means an establishment that serves alcoholic beverages for consumption on the premises, by guests who must be at least twenty-one (21) year of age to enter the premises, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets. The establishment may also give, serve or provide food to those guests, however, where there exists any part, portion, or area on the premises that allows for guests who are not at least eighteen (18) years of age to enter the premises, that establishment shall not fit the definition of a "Bar".

AND have **Section 5.05.010 (a) ATTACHED BAR** definition mirror the BAR definition except change 'area on the premises' to 'area in the Attached Bar'. Motion unanimously passed.

□ Because the proposed ordinance, if adopted, would be a City requirement and not that of the business owner, there was discussion whether or not language should be added to Section 5.05.070 (B) regarding posting signs. The additional language **...by City of Jasper Ordinance and that a fine may be issued to violators."** could be added to the proposed language of *Every public place where*

smoking is prohibited by this chapter shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited. Councilmember John Schroeder thought it would be hideous to have so many signs at every entrance. Councilmember Bradley Seger, Renee Kabrick and Ambrose Schitter did not think it was necessary. No action was made on this matter.

□ There followed discussion about **Section 5.05.040, Policies Regarding Smoking in Places of Employment**. This section states an employer must have a written smoking policy. It was suggested to delete the current language and replace it with language that says an employer must communicate to its employees that smoking is prohibited. Councilmember Bradley Seger asked how this would be communicated to employees. Councilmember Renee Kabrick said it should be in an Employee Handbook to which City Attorney Hemmerlein responded that many small businesses may not have handbooks. Councilmember Kabrick advised that if a policy was put in writing, it would protect the employer. Councilmember Bradley Seger did not think it was necessary to have a written policy, but the policy should be communicated to the employee.

A **motion** was made by Councilmember Bradley Seger and seconded by Councilmember Ambrose Schitter to delete the original (A) (B) and (C) under Section 5.05.040 and replace with the revised (A) and (B) as follows:

Section 5.05.040 Policies Regarding Smoking in Places of Employment.

- A. Each employer having an enclosed place of employment that is subject to this Ordinance shall make known to their employees that smoking is prohibited in all enclosed facilities within the place of employment. This prohibition includes, but is not limited to common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs and restrooms.
- B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Ordinance and to all prospective employees upon their application for employment.

Motion passed 6-1. Councilmember Renee Kabrick voted against.

□ Under **Section 5.05.050 Reasonable Distance**, Mayor Schmitt suggested adding language to this section that would define 'reasonable distance'.

A **motion** was made by Councilmember Renee Kabrick and seconded by Councilmember Raymond Howard to add the sentence *For purposes of this Section; 'reasonable distance' shall be not less than ten (10) feet* to Section 5.05.050 Reasonable Distance. Motion unanimously passed.

□ There followed some discussion about **Section 5.05.090 Violations and Penalties**. Council members were given a copy of the City's ordinance violation notice that lists various ordinance violations and its penalty. Councilmember Renee Kabrick recommended changing the language from \$100.00 for each violation to \$25.00 for the first offense, \$50.00 for the second offense and \$100.00 for the third and subsequent violations. She said this would be more in line with what the City does with the rest of the City Ordinances. Councilmember

John Schroeder wanted to know who would be the violator, the business or the smoker. City Attorney Hemmerlein responded that it could be the place of business or the smoker or both.

A **motion** was made by Councilmember Renee Kabrick and seconded by Councilmember Bradley Seger to change the language under **Section 5.05.090 (D)**, from *\$100.00 for each violation* to *Twenty-five Dollars (\$25.00) for the first offense, Fifty Dollars (\$50.00) for the second offense, and One Hundred Dollars (\$100.00) for the third and subsequent violations*. The motion for the amendment unanimously passed.

Mayor Schmitt then called for the vote to approve Ordinance No. 2006-18 with amendments on first reading. The ordinance passed on first reading by a vote of 4-3 with Council members Bradley Seger, Thomas Schmidt, Renee Kabrick and Raymond Howard voting aye while Council members Ambrose Schitter, John Schroeder and Randall Buchta voted nay.

Mayor Schmitt then stated that the amendments would be made to Ordinance No. 2006-18 and then the Ordinance would be brought to the June Council meeting.

Adjournment

There being no further business to come before the board, a **motion** was made by Councilmember Thomas Schmidt and seconded by Councilmember Renee Kabrick to adjourn the meeting. The motion carried 7-0 and the meeting adjourned at 8:30 p.m.

**William J. Schmitt, Mayor
Presiding Officer**

ATTEST:

Juanita S. Boehm, Clerk-Treasurer

Cynthia Kluemper, Recording Secretary